

CROSS-EXAMINATION TO CREDIT.

tended that this exception really represents the very case in which he ought to be compelled to answer; for, if a man has actually committed a crime, although he has not been convicted of it, his testimony must be open to suspicion. On the other hand, an answer may, according to the ideas of the society to which the witness belongs, involve disgrace, although the act disclosed by it ought not to affect the credit of the witness in the opinion of reasonable men.

If, however, the rule is to be reduced to the dimensions of a rigid definition, we perhaps cannot object to the formula rendered by Mr. Stephen, although we quite appreciate the shock which such a naked statement is calculated to give. Fortunately for the comfort of society, there are many extreme rights which no sane man enforces. No landlord distrains the morning after rent day without grave cause. A lawyer's letter generally precedes a writ of summons. Bargains are made and performed, although the parties might get out of them by the help of the Statute of Frauds. Experience, apart from fairness, teaches that legal rights are doubled-edged weapons, which a man should use carefully. So is it with cross-examination to credit. Counsel may find in his brief material for the injury of a witness; but the business of counsel is to succeed in the cause, and an outrage on the feelings of a witness may be represented by a jury. Arbitrators are notoriously averse to attacks of this class on the credit of witnesses, and it is hardly ever good policy to attempt anything of the kind in the conduct of references. Counsel have also to reckon with the judge; and the strength of strong judges is not wisely provoked to adverse action where jurors and audience would instinctively nod assent to a crushing summing-up. There is also the counsel's own sense of right. Nothing can be more monstrous, than for a counsel to ask a question calculated to torture not only the witness, but a host of innocent persons nearly connected with the witness, merely because the question is in the brief, and the client wishes it to be asked. Counsel is bound in honour and out of respect to himself and his profession to consider whether the question ought to be asked, not whether his client would like it put.

Counsel is not the mouthpiece of spite or revenge. He is not to adopt a line of conduct which, if universally carried out, would drive truth out of Court by intimidating witnesses. Among other considerations, he should weigh with himself whether the expected answer ought to render the witness unworthy of belief on his oath; whether the act to be revealed is of recent date, so as to make it improbable that the witness has repented his misconduct, and striven to amend his ways. In some cases, also, counsel may perhaps consider whether the good to accrue to his client from the answer is not so small as compared with the enormous mischief to be done to the witness, and to other persons, as to justify him in declining to put the question. We admit that no definite set of rules can be prescribed for counsel. He must judge for himself; and he will have the consolation of knowing that he is not very likely to go wrong if he acts on his own opinion, instead of inclining his ear to the remorseless passion or the unscrupulous greed of the party for whom he is retained.

We do not wish to enter upon the task of illustration, although that method is coming so much into fashion. But we may put one or two instances of recent occurrence. A woman gives evidence, not as prosecutrix, against a prisoner on a charge of theft. The witness is asked a question tending to show sexual immorality on her part on a particular occasion unconnected with the theft. The question is altogether unjustifiable. A man prosecutes a policeman for assault with intent to do grievous bodily harm. The prosecutor is cross-examined for the purpose of showing that he has been frequently charged by the police, and that he had the strongest motive for trumping up a false charge by way of revenge against the prisoner. The cross-examination is obviously just, and the necessity of unlimited authority to the counsel to press the witness home on every point with the utmost severity is plainly apparent. Everybody recollects the famous question on the trial of Orton, which has generally been held unjustifiable, mainly on the ground that the relations between the sexes have no direct bearing on the probability of the witness telling the truth. In these matters, before a judg-